

ANNUAL REPORT OF THE JUDICIAL OFFICER

Fiscal Year 2009

The Judicial Officer issues the final decision for the Secretary of Agriculture in all cases appealed from initial decisions of USDA's administrative law judges (ALJs). The cases arise under more than 20 statutes administered by the Secretary of Agriculture. During Fiscal Year 2009, the Judicial Officer issued cases arising under the Agricultural Marketing Act; the Agricultural Marketing Agreement Act; the Animal Welfare Act; the Commercial Transportation of Equine for Slaughter Act; the Packers and Stockyards Act; the Perishable Agricultural Commodities Act; and the Pork Promotion, Research, and Consumer Information Act. In addition, the Judicial Officer prepares draft decisions for the Assistant Secretary for Civil Rights under section 741 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (7 U.S.C. § 2279 note). The Judicial Officer also rules on motions filed by parties to proceedings and questions submitted by ALJs and issues reparation orders for money damages under the Packers and Stockyards Act and the Perishable Agricultural Commodities Act. Appeals from the Judicial Officer's decisions lie primarily to the United States Courts of Appeals, but, under some statutes, appeals lie to the United States District Courts. The Department has no right of appeal from a decision by the Judicial Officer.

The Office of the Judicial Officer is staffed by three persons: the Judicial Officer, an attorney examiner, and a legal technician, who also serves as secretary, paralegal, and administrative assistant.

The following three tables provide an indication of the production of the office and the direction of the backlog in the office. I have not included in these tables the two Packers and Stockyards Act reparation decisions and the 393 Perishable Agricultural Commodities Act reparation decisions issued by the Judicial Officer in FY 2009.

CASES RECEIVED – DECIDED – PENDING

	FY 07	FY 08	FY 09
Cases Pending Beginning of Year	5	12	8
Cases Received During Year	41	26	37
Cases Decided During Year	34	30	38
Cases Pending End of Year	12	8	7

NUMBER OF CASES DECIDED BY JUDICIAL OFFICER

Fiscal Year	No.
2000	35
2001	30
2002	30
2003	29
2004	37
2005	53
2006	46
2007	34
2008	30
2009	38

INTERVAL BETWEEN REFERRAL TO JO AND JO DISPOSITION

Fiscal Year	Median Interval	Longest Interval	Number of Cases Over 4 Months	Number of Cases Over 8 Months
2000	3 wk.	6 mo. 2 wk.	1	0
2001	1 wk.	2 mo.	0	0
2002	2 wk.	3 mo. 2 wk.	0	0
2003	1 wk.	11 mo. 2 wk.	3	3
2004	1 wk.	1 yr. 5 mo.	4	4
2005	1 wk. 3 da.	1 yr. 6 mo.	3	1
2006	2 wk.	1 yr. 2 wk.	6	4
2007	1 mo. 3 wk.	11 mo. 1 wk.	6	2
2008	2 wk.	1 yr. 7 mo.	10	7
2009	1 wk. 3 da.	1 yr. 11 mo.	9	5

A list of the pending cases referred to the Judicial Officer is attached as Appendix 1; a list of decisions issued by the Judicial Officer, which were appealed in FY 2009, is attached as Appendix 2; and a list of Court dispositions is attached as Appendix 3.

APPENDIX 1

September 30, 2009

PENDING CASES APPEALED TO THE JUDICIAL OFFICER

1. Sam Mazzola, et al., Petrs. & Resps.
AWA 06-0010, D-07-0064 – **Ref to JO 5/11/09**
Clifton, ALJ – **D&O 7/31/08** (Bench decision)
Juarez, OGC
R's response to C's cross-appeal, 5/11/09
C's opp. to R's appeal, response to R's motion for reinstatement of license, and cross-appeal, 3/13/09
R's appeal, 12/20/08
2. Ronald Walker, Alidra Walker & Top Rail Ranch, Inc., Resps.
A.Q. 07-0131 – **Ref to JO 5/26/09**
Hillson, ALJ – **D&O 5/20/09**
Bolinger, OGC
Rs' response to C's appeal 5/11/09
C's appeal 4/22/09
3. Larry Lion
Petition to End Debarment
Administrator's response filed 6/29/09
Larry Lion's pet. filed 4/2/09
4. D&H Pet Farms, Inc., Resp.
AWA 07-0083 – **Ref to JO 7/29/09**
Hillson, ALJ – **D&O 11/26/08**
Carroll, OGC
R's response to C's cross-appeal 7/29/09
C's opp. to R's appeal and cross-appeal 5/26/09
R's appeal 4/13/09
5. Lion Raisins, Resps.
I&G 04-0001 – **Ref to JO 8/6/09**
Carroll, OGC
C's response to Mot. for Consolidation & Reply to pet. to reopen 8/6/09
C's reply to Pet. for Reconsideration, 8/5/09
Rs' Mot. for Consolidation of 01-0001, 01-0003 with 04-0001; Rs' Pet. for reconsideration;
Brief in support of Rs' appeal pet., et al., 7/27/09
6. Lion Raisins, Resps.
I&G 01-0001 – **Ref to JO 8/27/09**
I&G 03-0001
Rs' reply to C's Pet. for appeal 8/26/09
C's response to Mot. for Consolidation & Reply to Pet. to Reopen or for Hearing, 8/10/09
Rs' appeal pet. 7/27/09
C's Pet. for appeal 7/24/09

7. Meadowbrook Farms, Inc., Resp.
P&S D-09-0097 – **Ref to JO 9/30/09**
Gordy, OGC
Davenport, ALJ – DDO 8/4/09
C's response to R's appeal pet. 9/28/09
R's appeal pet. 9/8/09

APPENDIX 2

JUDICIAL OFFICER'S DECISIONS APPEALED

Fiscal Year 2009

1. *In re Lorenza Pearson*, __ Agric. Dec. ____ (July 13, 2009), *appeal docketed*, No. 09-4114 (6th Cir. Sept. 10, 2009).
2. *In re Perfectly Fresh Farms, Inc.*, __ Agric. Dec. ____ (June 12, 2009), *appeal docketed*, No. 09-72434 (9th Cir. July 31, 2009).

APPENDIX 3

COURT DISPOSITIONS

Fiscal Year 2009

A. Courts affirmed the following decisions issued by the Judicial Officer.

1. *In re Robert Raymond Black II*, 66 Agric. Dec. 1217 (2007), *aff'd sub nom. Derickson v. U.S. Dep't of Agric.*, 546 F.3d 335 (6th Cir. 2008).
2. *In re Coastal Bend Zoological Association*, __ Agric. Dec. __ (Jan. 24, 2008), *aff'd per curiam sub nom. Brock v. U.S. Dep't of Agric.*, 2009 WL 1809699, (5th Cir. June 24, 2009).
3. *In re Marvin Horne*, __ Agric. Dec. __ (Feb. 4, 2008), *appeal dismissed*, 2008 WL 4911438 (E.D. Cal. Nov. 13, 2008).
4. *In re Octagon Sequence of Eight, Inc.*, 66 Agric. Dec. 1093 (2007), *aff'd sub nom. Ramos v. U.S. Dep't of Agric.*, 322 F. App'x 814, 2009 WL 922661 (11th Cir. Apr. 7, 2009).
5. *In re Tuscany Farms, Inc.*, __ Agric. Dec. __ (Oct. 15, 2008), *appeal dismissed*, No. 08-75040 (9th Cir. Mar. 17, 2009).

B. Courts reversed the following decisions issued by the Judicial Officer.

1. *In re Amalgamated Sugar Company, LLC*, 65 Agric. Dec. 252 (2006), *aff'd*, 2007 WL 2612675 (D. Id. 2007), *rev'd*, 563 F.3d 822 (9th Cir. 2009).
2. *In re Hein Hettinga*, __ Agric. Dec. __ (Oct. 30, 2008), *rev'd*, No. 07-5403 (D.C. Cir. Apr. 3, 2009).

C. The Supreme Court of the United States denied certiorari in the following decisions issued by the Judicial Officer.

1. *In re B.T. Produce Co.*, 66 Agric. Dec. 774 (2007), *aff'd*, 296 F. App'x 78 (D.C. Cir. 2008), *cert. denied*, 129 S. Ct. 2075 (2009).
2. *In re Donald R. Beucke (I)*, 65 Agric. Dec. 1341 (2006), *aff'd*, 314 F. App'x 10 (9th Cir. 2008), *cert. denied*, 129 S. Ct. 1530 (2009).
3. *In re Donald R. Beucke (II)*, 65 Agric. Dec. 1372 (2006), *rev'd*, 314 F. App'x 10 (9th Cir. 2008), *cert. denied*, 129 S. Ct. 1530 (2009).